



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990,
c. P.8, as amended (the “ *PBA*”)

AND IN THE MATTER OF a Proposal of the Superintendent of Financial
Services to refuse to register an amendment to a pension plan under sections
18(1)(d) and 89(1) of the *PBA* relating to the Ironworkers Ontario Pension Plan,
Registration Number 0206938

TO: Board of Trustees, Ironworkers Ontario Pension Plan

Attention: Michael R. Melvin
Managing Director
Ontario Ironworkers/Rodmen Benefit Plan Administrators Corporation
111 Sheppard Ave East
Toronto ON M2N 6S2

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO register Amendment #4 of Ironworkers Ontario Pension Plan,
Registration Number 0206938, as amended and Restated as of January 1, 2007, (the “Plan”).

REASONS:

- 1) The Plan is a multi-employer pension plan (“MEPP”) established pursuant a Memorandum of Agreement and Declaration of Trust dated June 9, 1966, between the Ontario Erectors Association, the Participating Local Unions of the International Association of Bridge, Structural, Ornamental, and Reinforcing Iron Workers and the Trustees of the Plan.
- 2) The Plan submitted Amendment #4 for registration by the Superintendent of Financial Services (the “Superintendent”) in an Application under the *PBA* for Registration of a Pension Plan Amendment dated October 2, 2009, (“Amendment #4”).
- 3) Amendment # 4 repealed and replaced section 7.02 of the Plan, and added two definitions to the Plan which are used in the text of the new section 7.02. The contents of section 7.02 currently, and the new provisions that are proposed are as follows:

Current

7.02 Subject to Section 7.03, a Member referred to in Section 7.01 who is not entitled to retire on pension under Section 4 may elect to receive, in lieu of the deferred pension specified in Section 7.01, a single payment equal to the Commuted Value of the deferred pension that was accrued as of the date of termination.

Proposed in Amendment # 4

1.11 “Funded Ratio” means the ratio of the assets to the liabilities of the Plan, as determined by the Trustees on the advice of the Actuary, subject to a maximum of 1.0.

1.17 “Paid Out Member” means a Member who is not eligible to commence his pension, has elected to terminate his membership in the Plan and receive a single lump sum payment.

7.02 Subject to Section 7.03, a Member referred to in Section 7.01 who is not entitled to retire on pension under Section 4 may elect to receive, in lieu of the deferred pension specified in Section 7.01, a single payment and, by so electing, to become a Paid Out Member. The single payment for a Paid Out Member is equal to the Commuted Value of the deferred pension, as adjusted by the following sentence. The deferred pension for a Paid Out Member is equal to the deferred pension specified in Section 7.01, multiplied by the Funded Ratio.

- 4) The effect of the change to the Plan that is proposed by Amendment #4 is that members of the Plan who terminate their membership in the Plan prior to retirement and choose to withdraw their deferred pension from the Plan in a lump sum will have the amount which they are entitled to withdraw from Plan reduced from the commuted value of their deferred pension to the commuted value of the deferred pension multiplied by the “Funded Ratio” of the Plan as defined in the proposed section 1.1, where the Funded Ratio of the Plan is less than one. This means that whenever the liabilities of the plan exceed the assets, as determined by the Actuary, members who elect to withdraw their deferred pension as a lump sum will receive less than the commuted value of that entitlement.
- 5) Amendment #4 contravenes both section 42 of the *PBA*, and section 19 of R.R.O. 1990 Regulation 909 (“Regulation 909”).
- 6) Section 42(1) and (2) of the *PBA* provide:
 42. (1) A former member of a pension plan who, on or after the 1st day of January, 1988, terminates employment or ceases to be a member of the pension plan and who is entitled to a deferred pension is entitled to require

the administrator to pay an amount equal to the commuted value of the deferred pension,

- (a) to the pension fund related to another pension plan, if the administrator of the other pension plan agrees to accept the payment;
 - (b) into a prescribed retirement savings arrangement; or
 - (c) for the purchase for the former member of a life annuity that will not commence before the earliest date on which the former member would have been entitled to receive payment of pension benefits under the pension plan.
- (2) The entitlement under subsection (1) is subject to the prescribed limitations in respect of the transfer of funds from pension funds.

- 7) Section 42(1) gives former members of a pension “portability rights” in respect of their deferred pension, that are reflected in the three transfer options described in clauses a), b) and c) of section 42(1). The intent of this section is to ensure that former members can exercise any of the portability options in section 42 without penalty. The term “deferred pension” as is used in section 42(1) refers to pension benefits that are payable at the time one of the three transfer options referred to in that section is selected. Amendment #4 would result in members who had ceased employment or terminated membership in the Plan and elected to transfer their deferred pension out of the Plan receiving less than an amount equal to the commuted value of their deferred pension that is otherwise available at the time the transfer option is selected. This is contrary to the requirement in section 42(1) that the administrator pay an amount equal to the commuted value. Allowing the Plan to reduce benefits in the manner described in Amendment #4 would compromise former members’ portability rights under the PBA as set out in section 42.
- 8) Section 14(2) of the *PBA* allows MEPPs such as the Plan to reduce the amount of a benefit and the commuted value of such benefit, which would otherwise be prohibited by section 14(1) of the *PBA*. However it does not give MEPPs the authority to reduce the commuted value of a deferred pension solely on the basis that a former member has selected a transfer option under section 42. In other words, section 14(2) provides relief from the application of section 14 but not the application of other provisions of the *PBA* such as section 42.
- 9) The relevant subsections of Section 19 of Regulation 909 provide:
19. (1) For the purposes of subsection 42 (1) of the Act, the commuted value of a pension, deferred pension or ancillary benefit shall not be less than the value determined in accordance with section 3800 of the *Canadian Institute of Actuaries Standards of Practice*, effective April 1, 2009, which is available to the public from the Canadian Institute of Actuaries at Suite 800, 150 Metcalfe Street, Ottawa ON K2P 1P1 or electronically on its website.

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(2) That portion of the commuted value of a pension, deferred pension or ancillary benefit that can be transferred from a pension plan as of a given date shall be determined by multiplying the commuted value, as determined in accordance with subsection (1), by the lesser of,

(a) the most recently determined transfer ratio;

(b) one.

(3) Subject to subsection (4), where the transfer ratio of a pension plan is equal to or greater than one, the administrator may transfer the commuted value of a pension, deferred pension or ancillary benefit in accordance with section 42, 43, 48 or 51 of the Act.

(4) Where the administrator of a plan knows or ought to know that, since the valuation date of the report most recently filed or submitted in respect of the plan under section 3, 4, 5.3, 13 or 14, events have taken place that may result in the reduction of the transfer ratio of the plan to a value less than 0.9, the administrator shall not undertake the transfer described in subsection (3) without the prior approval of the Superintendent under subsection 42 (8) of the Act.

(5) If the transfer ratio of a plan is less than one and the administrator of the plan knows or ought to know that, since the valuation date of the report most recently filed or submitted in respect of the plan under section 3, 4, 13 or 14, events have taken place that may result in the reduction of the transfer ratio by 10 per cent or more of the most recently determined transfer ratio, the administrator shall not undertake a transfer of any part of the commuted value without the prior approval of the Superintendent under subsection 42 (8) of the Act.

(5.1) If the commuted value of the pension, deferred pension or ancillary benefit is calculated on a basis that produces a commuted value higher than the value calculated on the basis prescribed under subsection (1), the administrator shall not make any transfer calculated on the higher basis until the administrator files a statement describing in detail the basis for calculating the commuted value.

(6) Subject to subsections (4) and (5), the administrator may transfer 100 per cent of the commuted value of a pension, deferred pension or an ancillary benefit from a pension plan that has a transfer ratio that is less than one where,

(a) the administrator of the plan is satisfied that an amount equal to the transfer deficiency has been remitted to the pension fund; or

(b) the aggregate of transfer deficiencies for all transfers made since the last review date does not exceed 5 per cent of the assets of the plan at that time.

(7) If less than 100 per cent of the commuted value of a pension, deferred pension or ancillary benefit is transferred, the balance shall be transferred by the administrator within five years after the date of the initial transfer.

(7.1) Interest shall accumulate, at the same rate used to calculate the commuted value of the pension, deferred pension or ancillary benefit, on the balance to be transferred under subsection (7).

(7.2) A transfer under subsection (7) after the initial transfer shall be made in accordance with subsection (6).

10) The words “transfer ratio” as they are used in section 19(2) of Regulation 909 are a defined term that is set out in section 1 of Regulation 909:

“transfer ratio”, in relation to a report, means the ratio of,

(a) the amount by which the solvency assets exceed the lesser of,

(i) the prior year credit balance, and

(ii) the sum of,

(A) the amount by which the sum of estimates of normal cost given under clauses 14 (7) (a) and (b) in the report exceeds the sum of the estimates given under clause 14 (7) (c) in the report for the periods in respect of which the estimates under clauses 14 (7) (a) and (b) are given, and

(B) the sum of the special payments required to be made under this Regulation during the periods in respect of which the estimates under clauses 14(7) (a) and (b) are given,

to,

(b) the sum of,

(i) the solvency liabilities, and

(ii) the liabilities for benefits, other than pension benefits and ancillary benefits payable under qualifying annuity contracts, that were excluded in calculating the solvency liabilities;

- 11) Amendment #4 contravenes section 19 of Regulation 909 because it uses the Funded Ratio of the Plan for purposes of determining the amount of the commuted value that may be transferred which is based on the advice of the Actuary instead of the transfer ratio as required by section 19(2) of Regulation 909.
- 12) Amendment #4 also contravenes section 19(7) of Regulation 909 because it does not provide for a transfer of the balance of the full commuted value within five years if as a result of applying the Funded Ratio the amount transferred is less than the Commuted Value of the deferred pension.
- 13) While the rationale for the Amendment may have included ensuring fairness as between the former members who transfer their entitlement out of the Plan and those that continue to be in the Plan in circumstances where the Plan is underfunded, these policy considerations cannot override the clear portability rights granted under the *PBA*. In any event, the situations involving the transfer rights in underfunded pension plans are addressed by the provisions of section 19 of the Regulation, by requiring the former members to defer receiving the full value of the deferred pension for five years if the transfer ratio of the plan is less than one and comes within the criteria set out in section 19. MEPPs such as the Plan are subject to section 19 of the Regulation despite the authority to reduce benefits under section 14(2). Therefore, if Amendment #4 is registered, the former's members who leave the plan would have the amount that is paid out at termination reduced twice, first by application of Amendment #4, and second by the application of section 19 to the commuted value that results from Amendment #4 (although the balance up to the reduced level under Amendment #4 would be paid over five years).
- 14) Section 18(1)(d) of the *PBA* states that Superintendent may refuse to register an amendment to a pension plan if the pension plan, with the amendment, would cease to comply with the Act and Regulations. If Amendment #4 is registered, the Plan would not comply with the *PBA* or Regulation 909.
- 15) Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the “Tribunal”) pursuant to section 89(6) of the *PBA*. **To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.**¹

¹ NOTE - Pursuant to section 112 of the *PBA*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto ON M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION on a Form for the written notice, please see the Tribunal website at www.fstontario.ca or contact the Registrar of the Tribunal by phone at 416-590-7294, toll free at 1-800-668-0128, ext. 7294, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY CARRY OUT THE PROPOSAL AS DESCRIBED IN THIS NOTICE.

DATED at Toronto, Ontario, this 27th day of **January, 2010.**

K. David Gordon
Deputy Superintendent, Pensions

Copy: Cameron Hunter, Eckler Ltd.

Hugh O'Reilly, Cavalluzzo Hayes Shilton McIntyre & Cornish LPP

Mark Davis, Eckler Ltd.